

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1072 OF 1991

Britannia Industries Limited
a public company, having its
registered office at 5/1A
Hungerford Street, Calcutta
700 017 and its Bombay Branch
office at Reay Road (E),
Mazgaon, Bombay 400 010. ..Petitioner

Vs.

1. The Bombay Agricultural
Produce Marketing Committee
Bombay, having its office
at Yardhaman Chamber, 5th
Floor, 127-C Kalyan Street,
Masjid, Bombay 400 009.

2. The State of Maharashtra ..Respondents

Mr. C.M. Korde with M.N. Jadhav and J.J. Soloman
i/by Soloman & Co. for Petitioner.
Mr. Y.R.Naik with Prashant Naik for Respondent No.1.
Mr. K.K. Singhvi, Spl. Sr. Counsel with Ms. Madulata
Kajale, AGP for Respondent No.2.

**CORAM : B. H. MARLAPALLE &
D. B. BHOSALE, JJ.**

Reserved on : April 24, 2006.

Pronounced on : June 16, 2006.

JUDGMENT: (PER B.H. MARLAPALLE, J.):

1. In this petition, filed under Article 226 of
the Constitution, the petitioner-company prays for a
declaration that,

(a) the Maharashtra Agricultural Produce
Marketing (Regulation) Act, 1963 (for short
the Act) is not applicable to sugar, cashew

nuts, refined oil and dry fruits purchased by
the company;

(b) to declare that the notification dated
25/9/1987 issued by the State of Maharashtra
under Section 62 of the Act is illegal, ultra
vires and unconstitutional to the extent it
adds "sugar", "dry fruits" and "edible oils"
to the schedule to the Act.

(c) the stocks of sugar purchased by the
petitioner-company directly from the Sugar
Mills located outside the market area of
respondent no.1 are not covered by any of the
provisions of the Act and also for a similar
declaration in respect of cashew nuts.

2. While granting Rule by the order dated
1/4/1991, this court had allowed the prayer for
interim relief in respect of cashew nuts and sugar by
relying upon a decision of this Court in the case of
Chaware Oil Industries, Karanja and ors. vs. State
of Maharashtra and ors. **(AIR 1985 Bombay 160)**. This
order came to be challenged in Civil Appeal No.2615 of
1991 and it came to be disposed off on 3/5/1991 by
directing the present petitioner-company to pay 50% of
the market fees and supervision charges only and for

the remaining 50%, the company was called upon to give a personal bond in favour of the Market Committee. This court was requested to dispose of the petition as expeditiously as possible and we are deciding the said petition almost after 15 years from that date. We must also note that by way of an amendment, the petitioner had sought to challenge the notification dated 25/9/1987 and the amendment was turned down by this court. Consequently, the petitioner-company filed Civil Appeal No.6609 of 2003 which came to be allowed on 22/8/2003 and the petitioner was permitted to amend the petition to challenge the said notification and the order passed by this court came to be set aside.

3. The petitioner is a public limited company incorporated under the Companies Act, 1956 with its registered office at Calcutta and a branch office at Mumbai. The petitioner has a factory at Reay Road, Mumbai and it manufactures consumer products such as biscuits and bread. For the purpose of making biscuits and bread, the petitioner requires, inter alia, sugar, refined oils and cashew nuts. As per the petitioner, sugar is purchased directly from the sugar factories which are located outside the market area of respondent no.1 and so is the case for the procurement of cashew nuts. So far as the procurement of refined

oil is concerned, as per the petitioner, the same is done within the local area of Greater Mumbai and normally the refined coconut oil, refined cotton seed oil and refined sunflower oil are purchased from the Oil Mills in Greater Mumbai.

. The respondent no.1 was originally established under the Bombay Agricultural Produce Market Act, 1939 which was repealed on 25/5/1967 consequent to the enforcement of the Act and it came to be treated to have been established under Section 13(1A) of the Act with effect from 15/1/1977. The market area of respondent no.1 comprises Greater Mumbai and Turbhe Village in Thane Taluka of Thane District. Notification under Section 4 of the Act came to be issued on 20/6/1988 by the Director, Marketing, Government of Maharashtra so as to regulate the marketing of sugar, edible oils and dry fruits etc. within the market area of the respondent no.1. By another notification dated 18/10/1988 issued under Section 5 of the Act, the Director, Marketing declared Dana Bunder/Masjid Bunder as the Principal Market area with effect from 1/1/1991 till further orders in respect of notified commodities in the notification dated 20/6/1988 issued under Section 4 of the Act. The respondent no.1 started collecting market fee and supervision charges under Section 31 and Section 34A

of the Act respectively on all notified agricultural produce with effect from 1/3/1989. Another notification under Section 5 of the Act came to be published by the Director, Marketing on 4/12/1990 partly modifying the earlier notification dated 18/10/1988 and by a further notification dated 13/8/1992 issued under Section 5 of the Act New Bombay was notified as the Principal Market by superseding the earlier notification dated 18/10/1988. On or about 8/12/1989 the State Government had granted exemption under Section 59 of the Act to some of the edible oil dealers and this act of the State Government came to be challenged by the respondent-Committee in Writ Petition No.2056 of 1990 and the petition was allowed by this court on 17/6/2005 by setting aside the order dated 8/12/1989. The notifications dated 20/6/1988 and 18/10/1988 were also challenged in Writ Petition No.139 of 1990 filed by M/s. Daulatram Tikamdas contending that dry fruits and dry dates were not agricultural produce. This petition came to be dismissed by the Division Bench of this court on 17/6/2005. The learned Senior Counsel for the petitioner, therefore, in all fairness gave up the challenges raised in this petition in respect of cashew nuts and, therefore, we were left with the petitioner's prayer for the declaration in respect of edible oils and sugar. In Writ Petition No.3278 of

1991 we have already turned down the challenge to the notification dated 25/9/1987 so far as it related to "refined edible oils" or "edible oils" and, therefore, the challenge to the notification dated 25/9/1987 and the contention of the petitioner that edible oil or refined edible oil is not an agricultural produce within the meaning of Section 2(1)(a) of the Act stands rejected.

4. The first ground raised by the petitioner is on the basis that sugar is manufactured from sugarcane and though sugarcane is an agricultural produce, it loses its identity and the sugar manufactured by it is totally a different commercial product. This argument is advanced by referring to the definition of the term "agricultural produce" under Section 2(1)(a) of the Act wherein the word "manufacture" is not incorporated on the lines of the very same definition under the Bihar Act and unless the word "manufacture" finds place in the definition under the Maharashtra Act, the State Government has no powers to add sugar in the schedule by invoking its powers under Section 62 of the Act. In short, it is the contention of the petitioner-company that sugar cannot be called a product obtained by processing sugarcane. Reliance in this regard has been placed on the judgment of this court in the case of Venkatrao Narayanrao Ambekar vs.

The Alma Sugar Mills and anr. **(AIR 1979 Bombay 38)** and the Constitution Bench decision in the case of Belsund Sugar Co. Ltd. vs. State of Bihar and ors. **(JT 1999 (5) SC 422)**. We must at this stage itself note that in the case of Belsund Sugar Co. Ltd. (Supra) the first issue was regarding the legality of levying market fees on the procurement of sugarcane by the sugar factories and we are not concerned with the said issue. The Supreme Court considered the second issue regarding market fees being levied on sugar and molasses and observed thus,

"So far as the sale transactions pertaining to these commodities are concerned, it has to be kept in view that they will have to be treated as agricultural produce in the light of the definition of Section 2(1)(a) of the Market Act. They get manufactured from the basic agricultural produce, namely, the sugarcane...."

In the case of Venkatrao Narayanrao Ambekar (Supra) this court (Single Bench) turned down the plea that sugarcane was processed and transformed in the ultimate product of sugar by several processes and held that sugar is not obtained by processing sugarcane.

5. The petitioner also contends that the stocks of sugar are purchased by it directly from the sugar factories and none of these transactions take place

within the market area of the respondent no.1-Committee. The stocks purchased from the sugar factories do enter the market area of respondent no.1 while they are being transported to the petitioner's factory so as to use to make biscuits and bread. As per the petitioner, the levying of market fees and the supervision charges are nothing short of an octroi being charged by the respondent no.1-Committee and, therefore, the demand made in that regard is illegal. While deciding Writ Petition No.3278 of 1991 and Writ Petition No.353 of 1998 we have considered the relevant provisions of the Act and more particularly Sections 2, 3, 4, 6, 7, 31, 34A to 34C, 60 and 62 of the Act and also the relevant Rules under the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967. Section 2(1)(a) reads as under:-

"2.(1) In this Act, unless the context otherwise requires,-

(a) "agricultural produce" means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest specified in the Schedule."

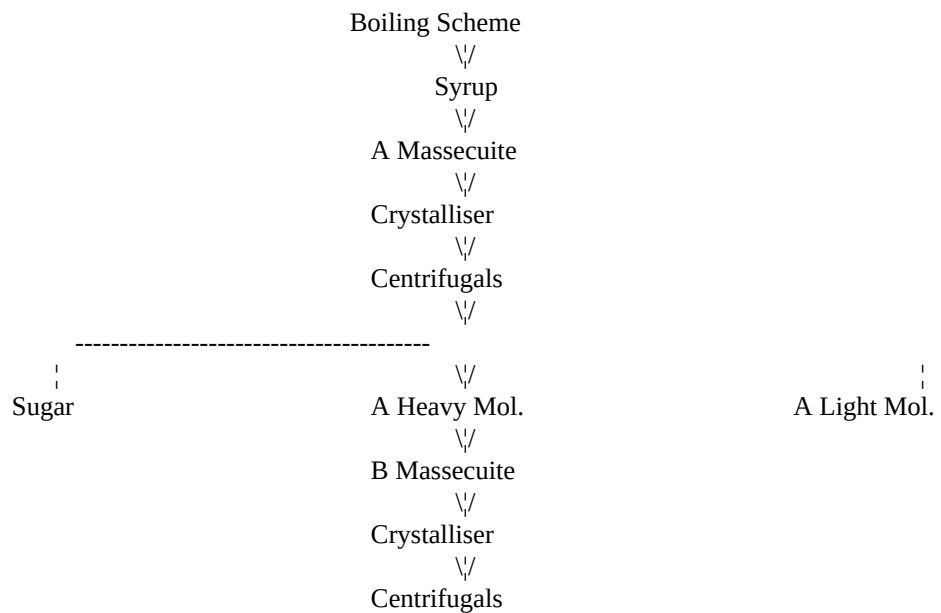
. This definition indicates that all produce of agriculture, whether processed or not and specified in the schedule falls within the ambit of agricultural produce. The main question, therefore, before us is,

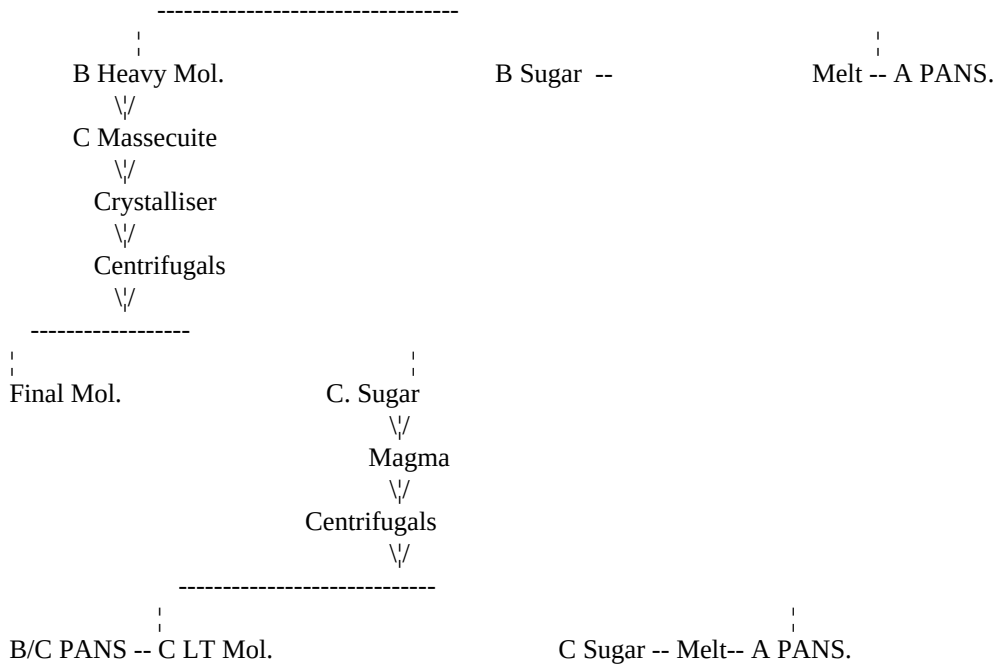
whether sugar could be called a produce of agriculture.

6. As per the "Training Manual for Sugar Mills" the production of sugar is divided into the following stages:-

- | | | | | | | | |
|----------|-----|------------------------|------------|---------|-------------|-------------|-----|
| milling | (a) | Extraction | of | juice | from | sugarcane | by |
| | (b) | Clarification of juice | | | | | |
| syrup | (c) | Concentration | of | juice | by | evaporation | to |
| boiling | (d) | Crystalization | of | sucrose | by | vacuum | pan |
| molasses | (e) | Centrifugal | separation | of | sugar | and | |
| | | from | the | | massecuites | | |

The Outlines of sugar production from cane can be described in the pictorial manner as under:-





. Having regards to the process of sugar production from sugarcane, the issue we are required to consider is, whether the absence of the term "manufacture" in the definition of agricultural produce under Section 2(1)(a) of the Act would take away the product "sugar" from the ambit of "agricultural produce" and whether sugar will not fall in the category of produce of agriculture only on that ground.

7. In our considered opinion the petitioner's overemphasis on the absence of the term "manufacture" in the definition of agricultural produce under Section 2(1)(a) of the Act is totally misplaced and the absence of the said word by itself would not take

"sugar" out of the purview of the produce of agriculture. The petitioner conveniently forgets that "sugar" is included in the schedule to the Act originally and it came to be deleted from Item VI by a notification dated 13/4/1982 and by the impugned notification dated 25/9/1987 it has been reincorporated under the said Item VI to the schedule alongwith "Gul" and "Sugarcane". It is thus clear that sugar is not added in the schedule for the first time by the respondent no.2.

. In the case of Rathi Khandsari Udyog vs. State of U.P. (**AIR 1985 SC 679**) the Supreme Court held that, "Khandsari Sugar" is an agricultural produce. In the case of Kishan Lal vs. State of Rajasthan (**AIR 1990 SC 2269**) the Supreme Court referred to the earlier decisions in the case of Rathi Khandsari Udyog (Supra), Kewal Krishan Puri (**AIR 1980 SC 1008**) and Sreenivisa General Traders (**AIR 1983 SC 1246**) and observed in para 5 as under:-

"5. Inclusion of sugar in the Schedule was urged to be arbitrary as it was not produced out of soil the basic ingredient of agricultural produce. Fallacy of the complete submission is apparent as it was in the complete disregard of the definition of the word "agricultural produce" in the Act which includes all produce whether agricultural, horticultural, animal husbandry or otherwise as specified in the Schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is

not exhaustive but inclusive neither excludes
any item produced in mill or factories nor it
confines its width to produce from soil. If
that be the construction then all items of
animal husbandry shall stand excluded. It
further overlooks expanse of the expression
"or otherwise as specified in the Schedule".
Nor switch over from indigenous method of
producing anything to scientific or mechanical
method changes its character. Khandsari
sugar, which is produced by open pan process
and it is not different from sugar produced by
vacuum pan process except in composition,
filterability and conductivity as held in
Rathi Khandsari Udyog (AIR 1985 SC 679)
(Supra) was held to be agricultural produce in
some decisions. No distinction was made on
method of production, namely, by modern plant
and machinery. To say, therefore, that sugar
being produced in mill or factories could not
be deemed to be agricultural produce is both
against the statutory language and judicial
interpretation of similar provisions of the
Act in statutes of other States....."

. The Supreme Court also referred to the
dictionary meaning of the word "agricultural produce"
from the Halsbury Laws of England, Vol.I and noted
that the said word for the purposes of agricultural
marketing schemes included any product of agriculture
or horticulture and any article of food or drink
wholly or partly manufactured or derived from any such
product and fleeces (including all kinds of wool) and
the skins of animals. In the case of Krishi Utpadan
Mandi Samity & anr. vs. M/s. Shankar Industries &
ors. **(JT 1993 (1) SC 601)** the Supreme Court again
examined the meaning of "agricultural produce" under
Section 2(a) of the U.P. Act and held in para 18 that
gur - lauta or raskat and rab - galawat and rab -

salawat fall within the definition of agricultural produce. In the State of Maharashtra, though Gul is produced from sugarcane, it is an agricultural produce within the meaning of Section 2(1)(a) of the Act and the same conclusion must also apply to sugar which is also produced from the sugarcane. Similarly in the case of Edward Keventer Pvt. Ltd. vs. Bihar State Agricultural Marketing Board and ors. **(AIR 2000 SC 1796)** the Supreme Court held that, the products "Frooti" and "Appy" would fall within the description of mango and apple specified in the schedule. It observed that the products not being listed in the schedule, would not fall within the ambit of agricultural produce. The observations made in para

5, which are relevant for the present purpose are

reproduced as under:-

"5. A perusal of Section 2(1)(a) unambiguously shows that the agricultural produce which are to be covered by the sweep of the Act necessarily has to be specified in the Schedule. If any agricultural produce is not specified in the Schedule, it goes beyond the purview of the Act and respondent has no power to levy fee on such produce. In the Schedule under caption 'fruits' mango and apple have been specified as agricultural produce. We further find in the Schedule that under caption 'cereals' wheat is specified at item No.3, whereas 'wheat atta', 'sujji' and 'maida' which are the products of wheat are separately specified at item Nos.14, 15 and 16 respectively. This shows that the agricultural produce 'wheat' has been treated as a separate agricultural produce as compared to its own product manufactured out of 'wheat' namely, 'atta', 'sujji' and 'maida'. 'Atta',

‘sujji’ and ‘maida’ are basically the agricultural produce of ‘wheat’"

8. In the case at hand also sugarcane has been separately listed under item VI in the schedule along with Gul and Sugar and thus the intention of the Legislature is to treat sugar as a produce of sugarcane, which is a separate agricultural produce. We, therefore, hold that sugar is a produce of agriculture coming into being in a processed form from sugarcane and the absence of the word "manufacture" in the definition of "agricultural produce" under Section 2(1)(a) of the Act would not in any way affect the status of sugar as being an agricultural produce under the Act.

9. The petitioner-company also raised an issue that though "sugarcane" is listed in the schedule, no notification under Section 4 of the Act declaring that marketing of sugarcane shall be regulated under the Act in respect of any market area in the State of Maharashtra has been issued as yet and only in respect of "sugar" such notification has been issued covering the market area of the respondent no.1 and not the entire State of Maharashtra. The intentions of the State Government in this regard are not expressly stated in reply and it must be, therefore, inferred that the State Government has failed to justify its

action for issuing a notification under Section 4 of the Act in respect of "sugar" for the market area of the respondent no.1-Committee, urged the learned Senior Counsel for the petitioner-company. Section 4 of the Act empowers the State Government to issue a notification in respect of a schedule produce for a specific market area and it is not necessary that such a notification has to be issued in respect of all the scheduled produce and for the entire State of Maharashtra. The State Government has, therefore, not acted illegally or in breach of the mandate of Section 4 of the Act.

. It was further pointed out by the learned Senior Counsel for the petitioner-company that for the regulation of marketing of sugar in the State of Maharashtra the following four orders issued under the Essential Commodities Act are in existence:-

- (a) Sugar (Control) Order, 1966
- (b) (Sugar Packing & Marking) Order, 1970.
- (c) Sugar (Restriction on Movement) Order, 1970.
- (d) Levy on Sugar Supply (Control Order), 1979.

As per the petitioner, in view of these four orders

issued under the Essential Commodities Act, there is no regulation left to be made in respect of the marketing of sugar under the Act and the provisions of the Act cannot be made applicable to the marketing of sugar and in any event sales of sugar by the sugar factories cannot come under the purview of the Act. No doubt, the sale of sugar is covered by the above mentioned orders issued under the Essential Commodities Act and sugar comes in the market from the sugar factories by following the provisions of the said orders. The petitioner-company also procures sugar from the various sugar factories in conformity with the above said orders. The enforcement of these orders cannot take "sugar" out of the purview of "agricultural produce" as defined under Section 2(1)(a) of the Act and, therefore, levy on sugar by the Sugar Supply (Control Order) 1979 would not come in the way of the respondent no.1-Committee in enforcing its statutory right under Section 31 of the Act to levy market fees on the marketing of sugar in its market area.

10. It has been consistently submitted by the petitioner-company that it procures sugar from the sugar mills which are located beyond the limits of the market area of respondent no.1 and, therefore, the said transactions do not take place within the market

area so as to empower respondent no.1 to levy market fees under Section 31 of the Act read with Rule 5 of the Rules. In the additional affidavit in reply filed by the respondent no.1, it has been fairly conceded that market fees can be levied under Section 31 of the Act when the agricultural produce is marketed within its area of operation and it was sought to be submitted that its area is not limited only to the city of Greater Mumbai. As noted earlier, Section 13(1A)(a) of the Act states that the area comprising Greater Bombay and Turbhe Village in Thane Taluka of Thane District or such areas as may be specified by the State Government by notification in the Official Gazette from time to time, shall be deemed to be a market area called the Bombay Market Area and the Market Committee for that area is respondent no.1. It is not the case of respondent no.1 that the Government of Maharashtra has issued a notification expanding its area beyond Greater Bombay and Turbhe Village in Thane Taluka of Thane District. If the petitioner-company has procured sugar from sugar factories located in Nasik, Pune, Ahmednagar and Sangli Districts etc., it cannot be said that sugar has been marketed in the market area of respondent no.1, though it has arrived in its market area for the captive consumption of the petitioner-company or as a raw material for the production of biscuits and bread of various brands.

Unless the sugar procurement is done by the petitioner-company within the area of Greater Mumbai and Turbhe Village of Thane Taluka of Thane District or any other area notified by the Government of Maharashtra to be a part of the market area of respondent no.1, it cannot levy market fees on sugar. The respondent no.1 has no power to levy market fees under Section 31 of the Act on the entire quantity of sugar that arrives within its market area on the procurement made by the petitioner-company and directly from the sugar factories which are located within the market area of respondent no.1. It is, therefore, necessary that the petitioner-company places before the respondent no.1 all its record to show that sugar was procured/purchased from the places outside the market area of respondent no.1 and if the respondent no.1 on a verification is satisfied, to that extent the respondent no.1 shall have no authority to levy market fees under Section 31 of the Act. This is an issue which will have to be examined by the Market Committee afresh and it is imperative for the petitioner-company to submit all the records before the respondent no.1 for such a verification and this should be done at the earliest possible. We have no doubt in our mind that the respondent no.1-Market Committee shall have powers to levy market fees under Section 31 of the Act only on the quantity of sugar

that has been purchased/procured within its market area and it cannot levy market fees on the entire sugar quantity that is received by the petitioner-company. The Company is right in saying that the levy of market fees cannot be on the lines of octroi i.e. charge by the Municipal Corporation. For charging octroi arrival is the precondition, whereas for levying market fees, marketing of sugar within the territorial limits of the Market Committee is the precondition. The petitioner-company will be, therefore, entitled to claim refund from the payments already made on account of the interlocutory orders if it is able to prove on the basis of the documents to be submitted to the respondent no.1 that only part of the procurement or none at all has been made in respect of sugar from any place within the market area of the respondent no.1.

11. Now coming to the doctrine of "quid pro quo", we have already held in Writ Petition Nos. 353 and 1341 of 1998 that for levying market fees the said doctrine is not applicable. We have also held that the Market Committee has no power to demand and recover supervision charges under the scheme of Sections 34A to 34C of the Act, for the time being and such charges can be demanded and collected only when the Government staff is deployed for the supervision

of the marketing activities of sugar i.e. procurement/purchase of sugar by the petitioner-company within the market area of the respondent no.1. It will be, therefore, necessary for the petitioner-company to procure/purchase sugar from the market yard or sub-centre of the respondent no.1, should the company decide to procure the same from the Mumbai Market and even if it procures sugar from private dealers or importers or any other traders including the Association of Sugar Traders within the market area of the respondent no.1, it shall be liable to pay market fees on such quantity of sugar. As suggested in our judgment in Writ Petition Nos. 353 and 1341 of 1998 it is necessary for the petitioner-company and the respondent no.1-Market Committee to sort out the future arrangements so as to avoid any inconvenience to either of them and at the same time, such an arrangement will facilitate in reducing the disputes between the parties.

12. In the result, we hold that,

(a) Sugar is an agricultural produce as defined under Section 2(1)(a) of the Act and the Act is applicable for the marketing of

sugar, cashew nuts, refined oil and dry fruits
etc. within the market area of the respondent
no.1-Committee.

(b) The notification dated 25/9/1987 issued
under Section 62 of the Act does not suffer
from any illegality.

(c) The respondent no.1-Committee has no
powers to demand and recover supervision
charges under Section 34A of the Act for the
time being and such a power can be exercised
only after the Government's staff is engaged
for the marketing of sugar procured/purchased
by the petitioner-company within the market
area of the respondent no.1.

(d) The respondent no.1 cannot levy market
fees on the sugar, vanaspati, dry fruits or
cashew nuts purchased/procured by the
petitioner-company from outside the market
area of the said Committee.

(e) From the amount already paid by the petitioner-company to the respondent no.1 pursuant to the order passed by the Apex Court, the petitioner-company may approach the respondent no.1 and on submission of documentary proof regarding the purchases/ procurements of sugar made by it during the pendency of this petition, the petitioner-company may claim refund of the balance amount, if any, on the basis of the above said declarations made by us.

(f) The respondent no.1 will hear the petitioner-company to settle the dues as expeditiously as possible and pass an appropriate order on the lines of the law laid down by us in this judgment, preferably within a period of three months from today.

. The petition is partly allowed in terms of the above order.

(D.B. Bhosale,J.)

(B.H. Marlapalle,J.)